

Dbrendel.txt

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1 IN THE UNITED STATES DISTRICT COURT FOR THE  
2 WESTERN DISTRICT OF PENNSYLVANIA  
3 CONSOLIDATION COAL COMPANY, )  
4 Plaintiff, )  
5 vs. )  
6 UNITED STATES DEPARTMENT OF )  
7 THE INTERIOR, NATIONAL PARK ) Civil Action  
8 SERVICE, ) No. 00-2120  
9 and )  
10 CAROL D. SCHULL, individually )  
11 and in her capacity as the )  
12 Keeper of the National Register )  
13 of Historic Places, )  
14 and )  
15 ROY BRENDEL and DIANE BRENDEL, )  
16 Defendants. )  
17  
18

19 DEPOSITION OF: DIANE F. BRENDEL

20 - - - - -

21 DATE: February 8, 2006  
22 Wednesday, 9:30 a.m.

23 LOCATION: Thorp Reed & Armstrong  
24 14th Floor  
25 One Oxford Centre  
Pittsburgh, PA 15219

26 TAKEN BY: Consolidation Coal Company

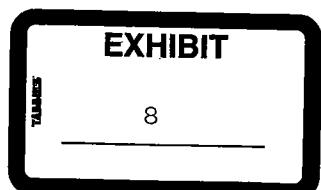
27 REPORTED BY: Keith G. Shreckengast, RPR  
28 Notary Public  
AKF Reference No. KS92307

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1 DEPOSITION OF DIANE F. BRENDEL,  
2 a witness, called by the Plaintiff for examination,  
3 in accordance with the Federal Rules of Civil  
Procedure, taken by and before Keith G. Shreckengast,  
RPR, a Court Reporter and Notary Public in and for  
the Commonwealth of Pennsylvania, at the offices of

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4 A. Right. There might have been a year or two  
5 when I was on the books at the very beginning,  
6 when we were setting everything up. But I'm  
7 not even sure I remember.

8 Q. So how old were you when you retired in '84?

9 A. 38.

10 Q. What caused you to retire at such an early age  
11 from your teaching profession for which you had  
12 a graduate degree?

13 A. For one thing, they were planning to close the  
14 small country schoolhouse that I worked at.  
15 And that upset me greatly, because I didn't  
16 believe in consolidating all the little country  
17 schools. And it seemed as if the philosophy of  
18 the school district was going far afield of  
19 what my philosophy of education was.

20 Q. So did you technically retire, or did you  
21 simply terminate --

22 A. I technically retired. I get a retirement  
23 check.

24 Q. When did you start getting that check?

25 A. I'm assuming right after I retired. It might

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10

1 have taken eight or nine months to process or  
2 whatever, but it was soon after I retired.

3 Q. So you've been on a retirement program or  
4 receiving compensation since the age of 38?

5 A. Right.

6 Q. And you're now 58?

7 A. 59.

8 Q. How much is your retirement compensation?

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9 A. I get \$77.99 a month.  
10 Q. Let me show you two documents, and we'll mark  
11 these as Exhibit 1 and 1A, these documents  
12 asking you to bring certain other documents  
13 with you here today.

14 These are two deposition notices.  
15 First there's the original notice which was  
16 given on or about December 8 of last year.  
17 Then we had the supplemental notice, which you  
18 have there, that notice was given on or about  
19 January 5 of this year. Have you seen those  
20 before?

21 A. Yes.

22 Q. Have you gathered up and delivered here today  
23 any documents in response to that?

24 A. Yes.

25 Q. Where are they, please? Are those the four

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1 boxes down there?

2 A. Yes.

3 MR. HOOK: I think there's eight  
4 boxes.

5 MR. BRENDEL: There's seven boxes.  
6 There's six big boxes, and one against the  
7 wall, folder.

8 MR. HOOK: Seven.

9 BY MR. KATARINCIC:

10 Q. So there's seven containers. Did you assemble  
11 those?

12 A. My husband and I did.

13 Q. And are there any documents that we've  
14 requested in the notice and the supplement  
15 which you did not have?  
16 A. Not that I -- Let's see the supplement.  
17 Q. Were you able to respond in some way to every  
18 one of the paragraph requests of the notice and  
19 supplement?  
20 A. Yeah, if we had it, then you have it now. If  
21 we didn't have it, then we didn't have it.  
22 Q. What I'm asking you is are there any paragraphs  
23 of this supplement and the original as to which  
24 you had nothing?  
25 A. Yes, there are.

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1 Q. What were those, please? You're reading from  
2 what, the original or the supplement?  
3 A. I don't know. Should I start with the  
4 original?  
5 Q. That might be better, yes.  
6 A. The thing is some of these I don't have  
7 documents for, it was just somebody telling me  
8 something.  
9 Q. That's what I'm asking you, are there any  
10 paragraphs as to which you had no documents to  
11 respond with; and if so, which one?  
12 MR. HOOK: Joe, I think you're asking  
13 her to give you a legal conclusion. In general  
14 all these documents respond to your request.  
15 And she's not required to tell you anything  
16 specifically about whether a particular  
17 document applies to a particular request.

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18                   MR. KATARINCIC: She is required. If  
19                   you want, I'll ask her to give me everything  
20                   you're producing in response to paragraph 1.

21                   MR. HOOK: And I'll tell her not to  
22                   respond.

23                   MR. KATARINCIC: You're serious?

24                   MR. HOOK: Yes.

25                   MR. KATARINCIC: Alright, I'll ask

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13

1                   her.

2 BY MR. KATARINCIC:

3 Q.                what documents did you produce here today in  
4                   response to paragraph 1, Exhibit A, of your  
5                   notice?

6                   MR. HOOK: Don't respond.

7 Q.                Do you know, ma'am?

8                   MR. HOOK: Don't respond to that  
9                   question.

10 Q.               Do you know what documents you produced, that's  
11                   all, in response to paragraph 1?

12                   MR. HOOK: Don't respond to that  
13                   question.

14                   MR. KATARINCIC: On what basis?

15                   MR. HOOK: You're asking for mental  
16                   impressions and legal conclusions. What  
17                   particular documents respond to paragraph 1 are  
18                   a result of my work product. You're not going  
19                   to ask for that.

20                   MR. KATARINCIC: I will ask you the  
21                   same question for each and every paragraph of

24 MR. HOOK: Joe, just save your  
25 breath, the same response to all of them.

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1 MR. KATARINCIC: Let's be courteous,  
2 Dave, please. I will just tell you my  
3 judgment, that's a totally improper objection.  
4 You have no right to direct her so. And she  
5 will most likely end up coming back here when  
6 we go to the Court.

7 MR. HOOK: Fine.

8 BY MR. KATARINCIC:

9 Q. Do you know whether any documents though picked  
10 up and encompassed by Exhibit 1, Exhibit 1A  
11 were held back and not produced?

12 A. I have no idea.

13 o. You don't know?

14 A. Huh-uh.

15 Q. Are there any documents that you know as to  
16 which attorney client privilege was asserted?

17 A. I have no idea.

18 Q. Did you have any discussions along those lines  
19 with anybody?

20 A. No.

21 Q. Do you know if any documents were withheld on  
22 the basis of, as Mr. Hook said, attorney client  
23 privilege, or more specifically work product  
24 privilege, which means documents of your lawyer  
25 and things he prepared and helped you with and

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1 so forth?

2 A. I have no idea.

3 Q. You don't know. Do you know who would know  
4 what was withheld because of privilege, either  
5 work product or attorney client?

6 A. Unless my lawyer knows. I don't know.

7 Q. How about your husband, did he ever discuss  
8 that with you?

9 A. No, we don't think in terms like these. And we  
10 don't communicate in terms like these. So I  
11 really don't know.

12 Q. You don't know whether or not any were withheld  
13 because of privilege?

14 A. Not that I know of.

15 Q. Just answer my question, that's all.

16 A. I'm trying.

17 MR. HOOK: Joe, she has answered your  
18 question.

19 MR. KATARINCIC: I'm trying to put  
20 her at ease, she's very apprehensive.

21 MR. HOOK: You're not putting her at  
22 ease, you're asking her the same question  
23 twice. If you keep it to the point, she'll be  
24 much more at ease.

25 MR. KATARINCIC: I'm very capable of

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1 doing that.

2 MR. HOOK: We appreciate that.

3 BY MR. KATARINCIC:

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4 Q. Did you ever discuss with your husband -- he's  
5 writing some notes here -- did you ever discuss  
6 with him whether or not anything was withheld?

7 A. No.

8 Q. How did you and your husband go about  
9 collecting all these documents that you're  
10 producing here today?

11 A. We went through file cabinets and folders and  
12 boxes and picture albums and cupboards, just  
13 looking for anything that pertained to whatever  
14 you might have wanted.

15 Q. And you're satisfied you produced everything  
16 that you could locate?

17 A. Yes. We spent a long time doing it.

18 Q. I appreciate your help on that, ma'am.

19 MR. KATARINCIC: Dave, how do you  
20 want to identify these boxes? You have what,  
21 six, and then that one container.

22 would you mark an exhibit on each  
23 box.

24 MR. HOOK: Mr. Brendel informs me  
25 that each box will contain, if there's

1 documents, paper type documents, it will  
2 contain folders that characterize the contents  
3 of the folder. There are I think two boxes of  
4 videotapes. Then the last box that is leaning  
5 against the wall has a number of different  
6 things, but essentially they're plans and  
7 drawings.

8 MR. KATARINCIC: We'll mark the  
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9 boxes. I'll go through them. I know you told  
10 me there's some he wants to take with him.

11 - - - -

12 (Exhibits 2 - 8 marked for identification.)

13 - - - -

14 BY MR. KATARINCIC:

15 Q. Do I understand that the boxes we've marked  
16 Exhibits 2 through 8 inclusive contain all the  
17 documents or other items responsive to the  
18 deposition notices for you to appear here  
19 today?

20 A. Yes.

21 Q. How often during the day do you take Xanax,  
22 three, four times?

23 A. I only take it when I know that -- when I know  
24 I'm going to be feeling anxiety, for example a  
25 day like today. Otherwise --

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1 Q. So you've taken it today?

2 A. Yes. Otherwise I don't need to take it at all.

3 Q. When did the property in question here, let's  
4 describe it as the Brendel property if that's  
5 okay, when was that acquired, ma'am?

6 A. 1971, October of 1971.

7 Q. And was it acquired by you and your husband?

8 A. Yes, it was.

9 Q. And what did you pay for it at that time?

10 A. I believe it was \$43,000.

11 Q. And how many acres of land were included in  
12 that purchase?